

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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BARRY GIBBS,

Plaintiff,

-against-

CITY OF NEW YORK, LOUIS EPPOLITO, SR., and
JOHN MULDOON,

Defendants.

**STIPULATION AND ORDER
OF SETTLEMENT AND
DISMISSAL**

CV-06-5112 (ILG)

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WHEREAS, plaintiff Barry Gibbs commenced this action by filing a complaint on or about September 22, 2006, alleging that defendants and others violated his constitutional and common law rights which resulted, *inter alia*, in plaintiff Barry Gibbs suffering personal physical injuries and sickness; and

WHEREAS, defendants have denied any and all liability arising out of plaintiff's allegations; and

WHEREAS, the parties now desire to resolve the remaining issues raised in this litigation, without further proceedings and without admitting any fault or liability;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, as follows:

1. The above-referenced action is hereby dismissed with prejudice, and without costs, expenses, or fees except as provided for in paragraph "2" below.
2. The City of New York hereby agrees to pay plaintiff Barry Gibbs future periodic payments and up-front cash at a cost to the City of New York in the sum of NINE MILLION

NINE HUNDRED THOUSAND and NO/00 (\$9,900,000.00) DOLLARS in full satisfaction of all claims against the City of New York and John Muldoon, inclusive of claims for costs, expenses and attorney fees. In consideration for the payment of future periodic payments and up-front cash at a total cost to the City of New York in this sum, Plaintiff agrees to the dismissal of all claims against the City of New York and John Muldoon, and to release all defendants, except Louis Eppolito, Sr., and any present or former employees or agents of the City of New York, or any agency thereof, except Louis Eppolito, Sr., from any and all liability, claims, or rights of action arising from and contained in the complaint in this action, including claims for costs, expenses and attorney fees.

3. Plaintiff shall execute and deliver to defendants' attorney all documents necessary to effect this settlement, including, without limitation, a General Release and Affidavit of Status of Liens, in the form annexed hereto, based on the terms of paragraph 2 above.


4. Nothing contained herein shall be deemed to be an admission by any of the defendants that they have in any manner or way violated Plaintiff's rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, or the City of New York or any other rules, regulations or bylaws of any department or subdivision of the City of New York. This stipulation shall not be admissible in, nor is it related to, any other litigation or settlement negotiations.

5. Nothing contained herein shall be deemed to constitute a policy or practice of the City of New York or any agency thereof.

6. This Stipulation and Order contains all the terms and conditions agreed upon by the parties hereto, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation and Order regarding the subject matter of the instant proceeding shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein with the exception of the Settlement Agreement and Release, which shall set forth the details of the future periodic payments.

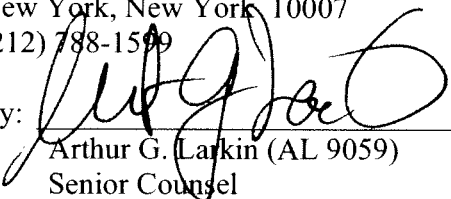
Dated: New York, New York
July 21, 2010

NEUFELD, SCHECK &
BRUSTIN, LLP
Attorneys for Plaintiff
99 Hudson Street, 8th Floor
New York, New York 10013

By: 

Nick J. Brustin, Esq. (NB 0605)

MICHAEL A. CARDOZO
Corporation Counsel of the City of New York
*Attorney for Defendants City of New York and
John Muldoon*
100 Church Street
Room 3-180
New York, New York 10007
(212) 788-1599

By: 

Arthur G. Larkin (AL 9059)
Senior Counsel

SO ORDERED:

Hon. I Leo Glasser, U.S.D.J.


GENERAL RELEASE

Know that I, Barry Gibbs, plaintiff in the action entitled Barry Gibbs v. City of New York et al., CV-06-5112 (ILG), in consideration of future periodic payments and up-front cash at a cost to the City of New York in the sum of NINE MILLION NINE HUNDRED THOUSAND AND NO/00 (\$9,900,000.00) DOLLARS, do hereby release and discharge defendants, except for Louis Eppolito, Sr.; their successors or assigns; and all past and present officials, employees, representatives and agents of the City of New York, or any agency thereof, except for Louis Eppolito, Sr., from any and all claims which were or could have been alleged by me in the aforementioned action arising out of the events alleged in the complaint in said action, including all claims for costs, expenses and attorney's fees.

This Release may not be changed orally.

THE UNDERSIGNED HAS READ THE FOREGOING RELEASE AND FULLY UNDERSTANDS IT.

IN WITNESS WHEREOF, I have executed this Release this 28 day of July, 2010.


BARRY GIBBS

STATE OF NEW YORK

SS.:

COUNTY OF NEW YORK

On July 28, 2010, before me personally came Barry Gibbs, to me known, and known to me to be the individual described in, and who executed the foregoing RELEASE, and duly acknowledged to me that he executed the same.


NOTARY PUBLIC

EMMA FREUDENBERGER
NOTARY PUBLIC - STATE OF NEW YORK
NO. 02FR6196775
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES NOV. 17, 2012

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
BARRY GIBBS,

Plaintiff,

PLAINTIFF'S AFFIDAVIT OF
STATUS OF LIENS

-against-

CV-06-5112 (ILG)

CITY OF NEW YORK, LOUIS EPPOLITO, SR., and
JOHN MULDOON,

Defendants..
----- X

STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

BARRY GIBBS, being duly sworn, says:

I am the plaintiff in the above-entitled action. My date of birth is [REDACTED]
and my social security number is [REDACTED]. My Medicare number is
~~no number~~ (plaintiff: write "No number" if not applicable). I reside at [REDACTED]
[REDACTED]. I am making this affidavit with full
knowledge that the same will be relied upon by the City of New York, its agents, employees, and
representatives in connection with settlement of this claim/action against them.

Please check all that apply below and detail where applicable:

☒ I am not indebted to any department or agency of the City of New York
and there are no liens outstanding.

☐ I have unpaid liens, violations or other debts owed to a department and/or
agency of the City of New York. I expressly consent to the payment of those sums, or to the
sums agreed upon by counsel, directly from the settlement proceeds.

*List all liens, violations and/or other debts by providing the name of each City agency (e.g.
Department of Finance; Department of Sanitation; Environmental Control Board) and the
outstanding sums due.*

☐ I have not received Medicaid or Public Assistance benefits.

☒ I have received Medicaid and/or Public Assistance benefits. The Human Resources Administration, Department of Social Services of the City of New York ("HRA") has issued a Final Notice of Lien which provides a total amount due of \$ 0 (attach copy). I understand that HRA will be paid that amount, or the amount agreed upon by counsel, directly from the settlement proceeds, and that the payment of an amount lesser than the final notice amount is a non-assertion of HRA's lien against the proceeds of this settlement and shall not be deemed a waiver of the full amount owed.

☒ As of the date of this affidavit, I have not received Medicare coverage/benefits. [Note: This query is made pursuant to Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007, 42 U.S.C. 1395(B)(8)].

☐ I am a Medicare beneficiary. I am aware of my obligation to reimburse Medicare for payments and/or benefits that I receive directly or indirectly and that reimbursement may be made from proceeds I receive from any judgment or settlement of a personal injury action. Medicare has confirmed that it will accept the total amount of \$ _____ .00 as full and final reimbursement of all Medicare payments made to date. [Attach copy of Medicare reimbursement letter]. In accordance with the attached Medicare letter, I consent to the payment of that sum directly from the settlement proceeds.

☒ I am not in arrears in child support payments.

☐ I am in arrears in child support payments and expressly agree to the collection by the NYC Office of Child Support of all unpaid sums directly from the settlement proceeds.

☒ I am not indebted nor am I subject to liens by any City public hospital.


☐ I am indebted to _____ [City hospital] in the total lien amount of \$ _____. I expressly consent to the payment of that sum directly from the settlement proceeds.

☒ I have not received Workers' Compensation or Disability Benefits^{*} and there are no liens for the same in this matter. ** excluding military benefits*

☐ I am indebted to _____ [for Workers' Compensation or Disability Benefits] in the total lien amount of \$ _____. I expressly consent to the payment of that sum directly from the settlement proceeds.


BARRY GIBBS

Sworn to before me this
28 day of July, 2010


NOTARY PUBLIC

EMMA FREUDENBERGER
NOTARY PUBLIC - STATE OF NEW YORK
NO. 02FR6196775
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES NOV. 17, 2012

HUMAN RESOURCES ADMINISTRATION
INVESTIGATION, REVENUE AND
ENFORCEMENT ADMINISTRATION
DIVISION OF LIENS AND RECOVERY
PO Box 3786
Church Street Station
New York, NY 10008-3786
Phone: (212) 274-5892 Fax: (212) 274-4988

NYC
Human Resources
Administration
Department of
Social Services
ROBERT DOAR
Administrator/Commissioner

Date: July 20, 2010

**EMMA FREUDENBERGER
NUEFELD SCHECK BRUSTIN
99 HUDSON STREET 8TH FLOOR
NEW YORK, NY 10013**

Case Name: **BARRY A GIBBS**

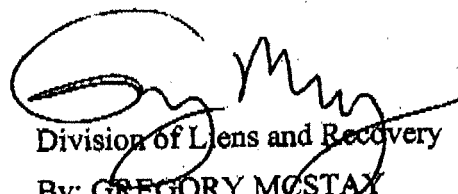
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Dear EMMA FREUDENBERGER:

In accordance with Social Services Law Section 104-b, the New York City Department of Social Services will not assert a lien against the proceeds of your client's personal-injury lawsuit/claim identified above.

Thank you for your cooperation in this matter.

Yours truly,


Division of Liens and Recovery
By: GREGORY MOSTAY
(212) 274- 5892